

### 3 - CASE STUDIES OF OPERATING SYSTEMS

Case studies of DWI enforcement systems in three jurisdictions were conducted to get more information about how such systems operate. This chapter describes how the case study sites were selected, our procedures for conducting the case studies, and the findings of the studies.

#### SELECTION OF CASE STUDY SITES

The most basic site selection criteria were (1) the existence of statutes requiring enforcement of several BAC limits for various target groups, and (2) having a range of differing enforcement techniques for these BAC limits. As indicated in Chapter 2, BAC limits of concern in this project are:

| Group                          | BAC Limit  |
|--------------------------------|------------|
| All Drivers                    |            |
| DWI                            | 0.08, 0.10 |
| DUI                            | 0.05, 0.08 |
| Under Age 21                   | 0.0 - 0.02 |
| Commercial                     | 0.04       |
| Commercial<br>(Out of Service) | 0          |

The sites selected for recruitment for participation in the study had to meet an initial screen that provided the appropriate mix of techniques and BAC limits before additional selection criteria were applied. Sites were to be counties or cities rather than states.

Additional site criteria included having appropriate data available at least to make rudimentary assessments of system functionality. This included such information as number of DWI arrests, BAC levels of arrestees, DWI conviction data, information on sanctions applied and compliance therewith, and crash data including time of day so that nighttime crashes could be used as a proxy of alcohol-related crashes. Though this project was not an evaluation project, these types of data were needed for preparing a thorough system description, identifying failure modes, and estimating levels of performance.

Systems that appeared to be performing satisfactorily and also those that appeared not to be performing satisfactorily were considered for inclusion in the study. Although the data indicated above permitted a more objective assessment of that issue as the project progressed, at the time of site selection and recruitment, we had to rely on more subjective measures. These included opinions of NHTSA regional

office, state specialists, staff from Governor's Highway Safety Program (GHSP) offices, and professionals in candidate sites.

Another important site criterion was cooperativeness of the various actors in the system at prospective sites. A study of this nature requires that those operating the system be willing and able to openly participate in the study. Potential participants included local, county and state police, prosecutors, judges, probation officers, problem drinking assessors, treatment professionals, licensing officials, hearing officers, chemists, communications specialists, members of the media and offenders. We assessed cooperativeness by asking personnel in GHSP offices about specific jurisdictions. For sites that met the initial site selection criteria, telephonic contacts were made with key players in the jurisdictions to assess interest further, and these were followed up by site-recruitment visits before commitment was made.

We also sought sites distributed geographically across the country, and representative of a range of socioeconomic and urbanicity characteristics. Sites were considered in states with and without administrative license revocation.

Finally, we looked for sites that had recently established new BAC limits and also sites that had their limits in place for a longer time. The former type of site would have personnel who would be more likely to recall the system design considerations associated with carrying out the new limits, while the latter type would have more information on how the system was actually functioning. A careful balancing of those two issues was made, with particular attention to the quality of potential cooperators within the sites.

Three sites were ultimately selected based on these criteria, *viz.*:

- Scottsdale, Arizona;
- Rockdale County, Georgia; and
- Palm Beach County, Florida.

## CASE STUDY PROCEDURES

The case studies were based on data collected during site visits lasting from three to five days. Both principal investigators of the study participated in the site visits. The site visits employed a variety of information-gathering techniques, including:

1. A half-day mini seminar with key actors in the local DWI enforcement system in which the basic system design of the jurisdiction was discussed, major problem areas identified, and some possible fixes to problems elicited. Police personnel participating included one or two shift commanders, general patrol officers, and special DWI patrol officers (if applicable). A prosecuting attorney with strong experience in DWI cases, and a traffic court judge who handled many DWI cases was present at the seminars. These adjudication and sanctioning personnel were needed because of the strong influences these

functions have on enforcement (and *vice versa*), and to help clarify, where needed, some legal issues involved.

2. One-on-one discussions with operational staff performing various functions at the task level. The purpose here was to verify and describe in further detail the operational functions being performed in enforcing the BAC laws. Each function was discussed sequentially to find out how and by whom they were performed and to identify the equipment and facilities used in performing the functions.
3. Observations of the performance of critical system functions and tasks (e.g., surveillance, and detection). The observations included ride-alongs in patrol cars, viewing of offender processing, and watching court processing, including arraignments, trials, and sentencing.

## CASE STUDY RESULTS - SCOTTSDALE, ARIZONA

### *Site Description*

Scottsdale is on the east side of Phoenix in Maricopa County, Arizona and encompasses 185 square miles. According to 1990 U.S. Census Data, the population of 130,000 individuals was 96% white, 1% black and 3% other races. Sixty-six percent (66%) of that population were between the ages of 18 and 64, 18% were under age 18, and 16% were 65 or older. The 1994 City of Scottsdale Facts sheet reports a population of 165,430 with a median age of 39.1 years.

Per capita personal income in 1989 according to the U.S. Census Data was \$23,482, higher than Maricopa County per capita income reported as \$14,970. The county unemployment rate in 1994 was 4.9%. The median household income was reported to be \$54,251 in the 1994 City of Scottsdale Facts.

### *System Description*

*Law Generation.* Arizona State Statutes require chemical tests of breath, blood, urine, or “other bodily substances” for individuals arrested for operating a motor vehicle under the influence of alcohol or other drugs. In the past, Scottsdale police officers administered breath tests to such individuals. However, defense attorneys questioned the reliability of breath tests based upon many issues ranging from the proper maintenance and calibration of the equipment to the qualifications of officers administering the tests. Consequently, authorities in Scottsdale decided to eliminate such questions by administering only blood tests to persons arrested for DUI. State Statute already allowed for police officers to request medical facility personnel who collect blood (and also other bodily substances) to supply samples from DUI suspects to law enforcement authorities for testing. Such samples can be obtained via search warrants if the suspect refuses to cooperate. The illegal *per se* limit for adults in Arizona is 0.10. Scottsdale’s anti-DUI enforcement system is currently operating

under these statutes. Refusals are discussed under the Enforcement section that follows.

*Enforcement.* Multi jurisdictional DUI task forces have proved very successful in the Scottsdale area by providing cooperation and support among the different agencies and jurisdictions. Up to ten different Maricopa County and State law enforcement agencies have participated in the task forces. These operations were highly praised by the police officers we interviewed and by judges but are typically conducted only during holiday periods.

The Scottsdale Police Department routinely operates special DUI police units. General patrol officers, after making a stop, can call for a DUI unit to handle further processing of the suspect. This procedure is frequently followed. When a citizen complaint is received, the nearest patrol car is dispatched. When conditions permit, the officer responding to the complaint tries to observe driving patterns before stopping the suspected impaired driver. After a vehicle stop, the officer will question the driver. If the officer suspects the driver of being under the influence or intoxicated, standardized field sobriety testing (SFST) will be administered. If the driver demonstrates impairment, the officer arrests and places the suspect into the patrol car. The suspect's vehicle is legally parked or towed at the owner's choice. The officer then completes a uniform traffic ticket (UTT), and a record check of the suspect is run on the computer in the patrol car. The suspect's driving history is checked to find out whether the offense is a misdemeanor or a felony. Felony charges are made when there are two prior DUI offenses, the DUI offense occurs on a suspended or revoked driver license, if a child under the age of 15 is in the vehicle, or if a death or serious injury has resulted from a crash.

A ticket is issued for a misdemeanor, but not for a felony or "aggravated" DUI charge. A "long form" provided by the District Attorney's office must be completed for a felony charge. The felony suspect must be booked, as opposed to a "field release" for misdemeanor charges.

Motorcycle officers must call in via a telephone to decide charges, because no computers are on the motorcycles. The driver license suspension is handled routinely by the officer. The order-of-suspension portion of the administrative *per se* and implied consent affidavit is completed showing a 90 consecutive day suspension (12 months for a test refusal).

After the subject is placed under arrest, the officer reads aloud to the suspect the text of the implied consent form asking if the suspect will consent to a blood test at a hospital. The officer initials each block of text as it is read and then asks if the suspect understands what has just been read, because this has been an issue in the past. If the suspect replies that he or she understands and will consent to a blood test, the officer telephones a hospital to prepare for the test and transports the suspect to the hospital. The Scottsdale Police Department has agreements with two hospitals to provide this service to minimize the time required to transport arrestees to the testing facility.

At the hospital two vials of blood are drawn from the suspect. Both vials are labeled, placed in a shipping container and transferred to the toxicological lab for processing following careful chain of evidence procedures. The Scottsdale Police Department operates its own toxicological laboratory and thus does its own blood alcohol analyses using one of the vials. The suspect is informed about how to obtain the second vial if the suspect desires an independent test. Officers support the use of blood tests versus breath because they result in fewer validity arguments. Finger prints are also taken at the hospital to insure that questions of identity of the offender may be addressed if necessary.

For a refusal, a twelve month license suspension is served on the offender. This completes the administrative *per se* civil process. At that time the officer turns his or her attention to collecting BAC evidence for the criminal charge. The officer informs the suspect that a judge will be contacted and a search warrant will be requested. The subject is told: "If the judge grants the search warrant, you will no longer have the right to refuse." For day time search warrant requests, the officer requests the search warrant in person. For night time search warrants, the requests are handled by a faxed telephonic search warrant request procedure. Three judges rotate turns so that one is always "on-call" and available to officers. If the suspect continues to refuse, the officer contacts the judge by telephone who then swears in the officer over the telephone. The officer faxes an affidavit and search warrant to the judge. If the judge finds probable cause the judge signs the search warrant and affidavit and faxes them back to the officer. The warrant authorizes blood to be taken from a test refuser. Reportedly, this system has worked well.

If an individual refuses to submit to a blood test and a warrant is issued, the blood sample is drawn at the police station by an on-call licensed phlebotomist. This is done because the subject can be more readily restrained in the police setting. Occasionally, for example when the officer is convinced the subject is deathly afraid of needles, a breath test is administered instead of the blood test.

The officer will complete a booking slip and a department report (DR). Other forms, many containing repetitive information such as name, date, driver license number, etc., are completed. The officers follow a checklist to make certain everything has been completed according to procedures. The officer notes whether any phone calls have been made and if a taxi or friend has been called. Officers usually will not transport a suspect to jail unless the person has outstanding warrants or other issues need to be addressed. Sometimes, officers will even drive suspects home if it is faster than waiting for a friend to pick them up. Suspects are held overnight if the individual cannot be released to an adult, if the person does not have a local address, or if the person is considered a flight risk. The typical arrest requires about one hour of the officer's time on the night of the arrest.

The next actions requiring the police officers involvement could be defense interviews, DMV (Department of Motor Vehicle) hearings, or officers may be called to testify in court. Officers are also required to appear for felony arraignments. The officers interviewed during our visit reported 95-98% of DUI cases are plead out.

One officer said that in 1996, he made 136 DUI arrests and only three went to trial. Another officer reported appearing at two jury trials and eight evidentiary hearings in five years. Monthly, officers receive a list of potential court dates. They are notified by a voice mail system a day before a court appearance if their appearance will actually be needed. They also are interviewed by defense attorneys and spend time in administrative hearings.

Prosecutors reported that the 0.04 law for commercial truckers is not heavily enforced and that passive sensors are not used.

*Adjudication.* If held for arraignment, the suspect can “bond out” before appearing before a municipal court judge for arraignment. A bond schedule is used for misdemeanor offenses (\$500 per offense, \$1,000 for higher levels of offenses).

Very few juvenile cases occur; these cases are handled by city court, as are all other traffic violations for juveniles. Juvenile defendants may be charged with liquor law violations and zero tolerance violations, but receive no jail time for any resulting convictions of these charges.

DUI suspects are arraigned individually in municipal court, typically within one week of arrest (by law within 10 days of arrest). The judge advises the defendant of rights and sentencing bounds. Almost all DUI defendants plead not guilty at arraignment. Judges will rarely accept a guilty plea at arraignment because they believe that defendants do not have enough information about rights, procedures, consequences, etc. to decide. Also, judges need to be certain that the defendant’s background check is complete, especially concerning possible prior offenses, and that type of information may not be available at the time of arraignment. Also, sometimes the blood alcohol test results are not available at arraignment.

Prosecutors are not present at arraignments. The court does not appoint public defenders at the arraignment. On the rare occasion when a judge does accept a guilty plea, the defendant has the option of changing the plea later. Felony DUI cases are transferred to County Court. The case will be dismissed in Municipal Court if County Court agrees to take the case.

Currently, six assistant city prosecutors are employed, and all handle DUI cases among their caseloads. A seventh assistant city prosecutor position will soon be created and will be dedicated to handling photo radar cases. A prosecutor will receive a “notice of appearance” from a defense attorney in response to the defense’s request for a “discovery” meeting. The meeting usually occurs before the arraignment. If a suspect is not represented by a defense attorney, then the prosecutor has no contact with the suspect until the pre-trial conference that is usually scheduled five to six weeks after arraignment. The court notifies the prosecutor of an arraignment with an indication of the plea. The triggering action for a prosecutor is often a copy of the UTT that is typically sent to a prosecutor after an arraignment. In the past, prosecutors tried to attend arraignments, but too much time was required “waiting around” for the proceedings, so their attendance was stopped.

Usually the prosecutor, the defendant's defense attorney and the defendant (if a plea is to be made) are present at a pre-trial conference. Often, defendants will appear at their first pre-trial conference without counsel, and the prosecutor will advise them of their right to a public defender at a nominal cost of \$175. No pre-trial diversion is available for DUI charges. Twenty to 25 percent of DUI defendants are said to plead guilty after the pre-trial conference. Pleas to lesser offenses are sometimes accepted when blood alcohol concentrations (BACs) are less than 0.10 or if it were uncertain that the person was the driver of the vehicle. Defendants with a BAC of 0.10-0.11 with solid objective evidence of probable cause will not be pleaded down.

Cases that go to trial are generally disposed of within one year. The prosecutor prepares for the case the day before the trial and sometimes on the day of the trial. Usually, the prosecutor has no chance to talk to the arresting officer until the trial day when the prosecutor appears in court with a "box full of cases." The prosecution is more likely to accept a plea on the day of the trial because of the large number of cases. However, prosecutors usually do not object to some continuances because it means they can deal with the case later. Most misdemeanor trials are DUI cases and the average length of time required is 1.5 to two days. Most are also jury trials; bench trials are rare.

Arizona is an administrative *per se* state and officers may be subpoenaed to appear at administrative hearings. Administrative decisions are appealed to County Court. A trial *de novo* on appeal cannot occur unless the record is incomplete. Motions are appealed on the record. Disincentives to file appeals do not exist, although decisions are rarely overturned. Zero BAC *per se* cases for youth are almost never appealed.

*Sanctioning.* Minimum sanctions are often imposed for misdemeanor cases. For the first DUI offense, the jail sentence is 10 days with all but one day suspended upon completion of alcohol classes. If an offender is sentenced to jail, he or she can schedule when that jail time is to be served. Jail sentences are often not fulfilled to their full extent due to "two for one" (two days off for each served) and work release programs. Time can be suspended if the offender accepts alcohol screening. Offenders from outside Scottsdale may serve jail time in their own jurisdiction; they must post bail and then are released. Treatment is mandated and so is usually not an issue. Priors are dropped if the offenses happened more than five years before the current offense. Probation is rare because the city court has no probation department.

#### *Problem Areas and Possible Fixes*

*Enforcement Issues.* Police officers are not receiving subpoenas to appear for DMV hearings under the administrative *per se* statute until a few days before the hearing. E-mail might provide one solution to this problem. Reasons for officers

failing to appear at these hearings include conflicting court appearances, training, sickness, or vacation. Court cases take precedence over the *per se* hearings, and time does not permit rescheduling the hearing. As a result, the administrative sanction is lost. A longer advance notice of the hearing is needed to alleviate this problem.

*Evidentiary Hearing Issues.* These issues include instances when Miranda rights were not read to the suspect and, more often, the suspect asked for an attorney and was not allowed a phone call before the blood test. These can result in the case being dismissed. Also, probable cause for the stop can be questioned. A potential problem area would be if the phlebotomist were called to testify. However, the phlebotomist is not identified on any reports (by statute, this is not required) and thus cannot be called into court to testify; this issue has been addressed in court and to date the policy has remained. Also, the officer may be “rusty” and his or her field performance could be an issue. Regular training can provide solutions for these types of problems. The accuracy of breath tests was often questioned in past cases that, as stated previously, have resulted in the successful use of blood tests.

*Adjudication Issues.* A study by a court staff member found that 40% of all DUI cases took more than 150 days after arrest for disposition. Twelve percent were more than one year old. These figures do not include suspects who have failed to appear. Many failures to appear (FTAs) are occurring, up to 50% some days, but appearance is not required in municipal court.

Continuance of cases causes major problems. One DUI case had 29 continuances. Many continuances are granted because of schedule conflicts: lawyers get continuances to appear in a higher court, defense lawyers have too many cases, etc. and as stated previously, prosecutors do not object because they have such heavy case loads. At least one judge would like to set a limit of two continuances per case. In the past, “calendar calls” were initiated in which the bailiff would call the defense lawyer a week before trial to find out if a continuance was needed. The prosecutor would check with the bailiff to see which trials were still set. This procedure was changed to require both attorneys physically to appear in court to say if they were prepared to proceed on the scheduled date.

Usually the defendant will sit for trial after several pre-trial conferences show no plea. The court staff study found 16-17% of DUI cases go to trial. Backlogs occur because as many as 5-15 jury trials may be set for one day, when only one can go on at a time. Oldest cases receive priority. Trial participants will usually not show if a request for a continuance has been filed before the trial date. Bench trials are rare, but a bill will be proposed soon to eliminate jury trial eligibility for a first offense DUI case.

*Sanctioning issues.* Complete jail sentences are not fulfilled due to work releases and the “two for one” policy. Also, time may be suspended if the defendant accepts



an alcohol screening to learn the extent of alcohol use and/or abuse by the individual. Minimum sentences are often imposed.

## CASE STUDY RESULTS - ROCKDALE COUNTY, GEORGIA

### *Site Description*

Rockdale, the county with the smallest area in Georgia, is southeast of Atlanta. The county encompasses small urban, suburban and rural areas. The county seat is in Conyers, Georgia. According to the Bureau of the Census, the population of Rockdale County has been increasing steadily from 36,600 in 1980 to a 1995 population of 64,500. In 1990, roughly 64% of the 54,100 individuals residing in Rockdale County were between the ages of 18 and 64, 28% were under age 18, and 8% were 65 or older. Ninety percent (90%) of the population in 1990 were white, 8% were black, 1% Asian or Pacific Islander, and 1% were other races. Per capita personal income for the County in 1993 was \$19,267. The 1994 unemployment rate was 3.7%, lower than the Georgia state unemployment rate of 5.2% for that year.

### *System Description*

Rockdale County is reportedly not typical of other jurisdictions in Georgia in handling DUI cases. System actors know each other and cooperate and educate each other about the system and cases. Considerable continuity exists among staff who remain available always to help each other. They appear proud of their accomplishments as part of the anti-DUI system and appear to enjoy a high level of camaraderie. The judge keeps statistics on every case, getting information on “pleaders” just before the pronouncement of a guilty verdict and then using that information to structure sentences. Police officers and prosecutors discuss each case together before court appearances.

*Law Generation.* Georgia is currently a 0.10 state, although the persons we talked with support 0.08 *per se* laws and hope Georgia will join other states in passing those laws. One Rockdale prosecutor believes a nationwide BAC standard should be established. Reportedly DUI laws are changed in Georgia almost every year and, consequently, staying abreast of the law is difficult. Georgia has an administrative *per se* statute.

*Enforcement.* DUI “road checks” are conducted every holiday period. Problems have occurred when drivers who appear impaired when questioned record BACs less than 0.10. Sometimes, officers cannot prove from driving actions that such a driver was impaired. “Concentrated patrols” are carried out once a month. Conyers city police have no DUI task force, but a “special operations” group is planned which will include anti-DUI enforcement. Currently, DUI suspects are found while responding

to calls for service, but police concentrate sometimes on areas involving citizen complaints. Much media coverage of DUI due to crashes has occurred. Citizens can call \*GSP on cell phones that, reportedly results in many DUI stops. Judges urge police officers to obtain as much information as possible from citizens reporting DUI suspects; encourage the reporter to follow the DUI suspect (if possible to do so safely) and encourage the police to obtain the reporter's name and address.

Officers videotape DUI suspects beginning immediately upon suspicion that the driver is DUI. Videotape helps establish the officer's credibility. Jurors want to see a complete videotape record covering all actions, not just those that "make the case." One officer identified a problem of perspective "distortion" due to the location of the video camera. He also discussed the benefits of not waiting to stop a vehicle after capturing erratic driving patterns on videotape; this avoids long episodes of no erratic driving that could be used by the defense to question probable cause.

After stopping a DUI suspect, the officer asks the suspect to take a SFST. The police officer's safety is always a consideration, and sometimes the SFST will not be completed because of the need to get a dangerous suspect into the patrol car. The officer documents the reason a SFST was not completed. In these cases, the individual is given a Preliminary Breath Test (PBT). Arrests are made at the scene before transporting the suspect. The SFST form is completed at the arrest scene. Usually the implied consent law is read to the suspect while in the patrol car.

In Rockdale County, some officers do not complete the administrative *per se* forms. If the suspect wins the criminal case, under Georgia statute, the refusal violation is null and void, and the license is not suspended. Most important, the license hearings are said to have become "fishing expeditions" for the defense. By not completing the forms to take the license, the hearings are eliminated. Police officers believe that most hearing officers do not know DUI law nor what the scope should be of these hearings. One officer lost an implied consent case because he did not have the actual card containing the implied consent rights that he read to the defendant.

The officer stays with the vehicle until it is impounded or released to another person; the procedure depends on the location of the stop. A vehicle release form is filled out. Drunk passengers are driven home or released to a sober person.

The suspect is transported to the jail for a breath test or to the hospital for a blood test. If certified, the arresting officer will administer the breath test, otherwise a certified officer will conduct the test. A mandatory 20 minute waiting period from time of initial personal contact is required before an evidentiary breath test is taken. After the test, individuals are released to the jailer. If the suspect's BAC is much lower than the legal limit and the officer sees impairment inconsistent with the BAC reading, the officer will request a blood or urine test. Individuals are held until their BAC is 0.05 or less. Those of age 21 or higher who have a BAC of 0.08 or more are held for 24 hours.

The officer completes the incident report (IR) within five days. One hour of processing time is typical, not including completing the IR. Total time to process a

DUI arrest including forms averages 1.5 - 2 hours. If the suspect requests an additional test, another 40 minutes or so are required.

*Adjudication.* DUI tickets are brought to the prosecuting clerk's office. DUI defendants do not get a chance to come to court on just the ticket; prosecutors have to file the case first. This allows prosecutors time to prepare the case before the speedy trial clock starts. The laws regarding speedy trials require a case to be tried within the remainder of the current court session or by the end of the next court session. Each court session is three months long, so a case going to trial will be completed within a maximum of 180 days. A Criminal Case Management System has been in place since 1987. This system tracks each case through the entire criminal justice system including jail.

Rockdale County court is classified as a "state court." There are one judge, one criminal justice system administrator, three investigators and seven prosecutors in Rockdale County. The prosecution receives the ticket, breath alcohol testing (BAT) tape, runs a criminal history, driver history, and then starts filling out the forms. Driver history data appear to go back to 1976. Priors are recorded and classified, for example, first in five years and second in life. Investigators compile a witness list, make sure all the necessary information is in the case folder, and handle any investigative work needed. They also prepare a summary of the facts of the case and the charge. The file includes the police officer's IR, refusal information, car impound form and bond sheet. The formal document filed is called an "accusation," analogous to a "criminal complaint." The Uniform Traffic Citation (UTC) can also be ratified and filed as an accusation. The package is then sent to the responsible prosecutor. Prosecutors meet once a month to discuss the accusations that are then batched and sent to the judge's clerk or else released.

All prosecutors have access to Criminal Justice System (CJS) data; public defenders also have read-only access to the data on their own screens. A "Prosecutor's Module" will soon allow CJS data to be merged into a WordPerfect document, thus eliminating repetitive entry of information (e.g., name, address, date of birth, etc.).

Refusals can be used as evidence in a DUI trial. When building a case, the prosecutors believe it best to rely on the officer's observation of the suspect's behavior and not entirely on a BAT. They believe that officers should observe every SFST as if there were not going to be a BAT, and they should document observations. This is because if the information is not available in the paperwork submitted for discovery, it may not be admitted into evidence. Also, the videotaped session should include a recorded narrative of the suspect's behavior; the camera does not record subtle actions by the suspect.

Police officers in Rockdale County believe the court there has a proper DUI adjudication system and report it is "much more picky" than other courts and imposes tougher sentences. These tougher sentences are thought to result in fewer guilty pleas because offenders fear the imposition of sentence and hope to be found not guilty at

trial. The officers do not appear at arraignments. Defendants who want to plead out come back later to enter a plea.

Few DUI cases go to trial; one officer reported that out of 800 DUI arrests, he only testified at four jury trials. A prosecutor reported that only four out of 62 DUI cases on the docket on a particular day would be tried. Officers, nevertheless, must be prepared to take all cases to trial. Preparation will result in “winning” cases through guilty pleas though there is no trial. A prosecutor reported that written, documented information is extremely important. In earlier years, it was reported that police management would not permit officers to make detailed reports because they were too time consuming. An important observation was to be careful when attempting to reduce paperwork, not to eliminate useful information.

The judge who was interviewed for the project believes DUI cases are the most difficult trials of all, including murder cases. Juries introduce great uncertainty into the process because they are influenced by experiences, inaccurate or wrong information, misconceptions, etc. Much information provided during the trials involves legal complexities and is technical in nature, which confuses some jurors.

*Sanctioning.* Pre sentence investigations are not routinely performed, although the judge does question suspects at arraignment and at trial just before sentencing. Offenders are usually sentenced to assessment and treatment as determined by assessors plus some jail time followed by house arrest. Submission to periodic breath alcohol tests is also often required.

Pictures of convicted DUI offenders are published in the newspaper along with sentences; all DUI offenders must attend a victim’s impact panel.

#### *Problem Areas and Possible Fixes*

*Law Generation Issues.* Reportedly, DUI laws are changed in Georgia almost every year and, consequently, staying abreast of the law is difficult. All Court Justice System (CJS) staff should get a copy of law changes each year in language that is understandable and should attend a briefing on those changes.

The provision of the Georgia Statutes which vacates an administrative *per se* license suspension if the criminal case results in a not guilty verdict has undermined use of the administrative *per se* law by law enforcement officers. This can most likely be resolved through law generation where the criminal and administrative tracks would be more thoroughly separated, as they are in many other administrative *per se* states.

*Adjudication Issues.* The District Attorney has to approve UTC as an “accusation.” This results in large groups of offenses moving to trial simultaneously. This crowds the dockets with DUI cases during some periods and leaves them relatively free of DUI cases at other times. More routine filing of DUI accusations could relieve this problem.

## CASE STUDY RESULTS - PALM BEACH COUNTY, FLORIDA

### *Site Description*

Palm Beach County is located in southeastern Florida bordering on the Atlantic Ocean. U.S. Census data for 1995 lists an estimated population of 972,093, an increase of 68.5% over that in 1990. In 1990, 85% of the population was white, 12% was black and 3% were other races. Twenty-five percent of the estimated population in 1995 was age 65 or older.

Per capita personal income in 1993 was \$32,230, and the unemployment rate in 1996 was 8.3 percent. The state unemployment rate has been declining from 8.3 in 1992 to 5.1 in 1996.

### *System Description*

*Law Generation.* The illegal BAC level in Florida is 0.08; a new 0.02 law for persons under the age of 21 went into effect January 1, 1997. If someone less than 21 is stopped for any reason, and the officer smells alcohol on the person's breath, the officer does not need probable cause for DUI at that point to request a breath test. If a person less than 21 does not give a breath test, he or she will be given a citation and will lose his/her license for one year. If the under-21 person takes the test and registers a BAC of 0.02-0.08, the result is the loss of the driver license for six months.

*Enforcement.* DWI laws are enforced by the Florida State Patrol, the Palm Beach County Sheriff's Department, and the various local enforcement agencies in the county. Reportedly, cities in Florida are more active in anti-DUI enforcement than they were in the past. Sometimes checkpoints are conducted in cooperation with other agencies. The Florida State Patrol has a three-person DUI task force in Palm Beach County working 10 hour days from Thursday through Sunday. One trooper believes DUI offenders are not as "prevalent" as they used to be on the roadways. Traffic is lighter during the week. One trooper says 2.5 - 3.0 hours are "lost" in processing a DUI arrestee; more troopers are needed. This number is down from an estimated 4.0, mainly due to recent reductions in paperwork requirements.

The Sheriff's Department formerly had a DWI Task Force, but that has been discontinued. Now, most of DWI enforcement is done by regular patrol units and by the traffic homicide unit. Sources indicate a de-emphasizing of DWI enforcement in recent years.

Overall, the DWI arrest rate in the county is low compared to the national average. Available data indicate some 2,000 to 3,000 DWI arrests per year which amounts to roughly 0.3 % of licensed drivers.

The Florida Department of Transportation uses PBTs for enforcement of the commercial vehicle operator 0.04 law. PBTs can be used in other counties to prove

probable cause. Palm Beach County has no rules governing admissibility of PBT results. PBTs are used by the Sheriff's Department regular patrol officers only for the enforcement of 0.02 law for minors. Parents' concern over "criminal records" for children led to the requirement for a PBT. They did not want to have young persons arrested and taken to the "BAT cave" (the breath alcohol testing facility in the county jail) for testing. Prosecutors did not want PBTs administered in regular DUI cases because they were concerned that police officers would not conduct further investigations and would only have PBT results that are not admissible in court. If the PBT is used, then the evidentiary BAT cannot be given. Evidentiary BATs cannot be used for non-criminal testing and the 0.02 laws for minors are treated that way. Thus, PBTs are only used for greater than 0.02 law violations when an actual DUI case is considered unlikely and in commercial vehicle operator 0.04 enforcement. PBTs are used for *per se* violations only when there are overlapping criminal DUI violations.

Florida law requires a DUI arrestee be held in jail for eight hours, or until the BAC is less than 0.05; individuals are usually held rather than tested.

SFSTs are videotaped at the roadside if the patrol vehicle is equipped to do so. A judge commented that the videotapes were often of poor quality due to poor technique and inadequate equipment, but that good quality videotapes are effective tools in court. She said another problem was the long amount of time it takes the officer and suspect to reach the "BAT cave" (sometimes 1.0-1.5 hours) because of the large area covered and few testing stations. After that amount of time, the suspect may not show as much impairment when videotaped as when arrested. Thus, only the administration of the BAT and related questioning are videotaped in the "BAT cave."

A judge stated that police officers too frequently ask questions by rote that often do not apply and seem silly in context. Some officers do not understand that questions provided on forms and in manuals are intended only as guidelines.

*Adjudication.* Two trial-level courts hear most DUI-related cases, County Court for misdemeanors and Circuit Court for felonies. Pre sentence investigations are not done for misdemeanor cases. Pleas are accepted at arraignment, and sentencing may occur immediately or later. Thirty to 50 percent of individuals charged with DUI plead at arraignment where the judge, prosecutor and public defender or a defense attorney are present. Repeat offenders may also enter pleas at arraignment. The prosecutor will contact other states directly where the individual has had driver licenses, but sometimes it is difficult getting information from other states. The judge gives everyone a chance to speak and looks at the driving record before sentencing. The judge usually accepts negotiated dispositions.

Defendants who do not enter pleas appear three weeks later for "case disposition." There, the prosecutor is asked if evidence was provided for discovery and if the defendant was offered a plea at arraignment. After case disposition, attorneys and the judge will meet again for status checks. Officers and breath test technicians

usually have only a couple of court appearances. The judge usually does not grant a continuance after the second status check. Motions to dismiss may be presented between status checks. “Judge shopping” is not possible; cases are assigned randomly to judges.

Defendants cannot be offered a plea bargain at trial. The prosecutor’s office has a policy of not accepting a negotiated plea after “calendar call” (the Friday before a trial). When defense attorneys win DUI cases, it is mostly through pre-trial motions. Motions to suppress include: no probable cause for the stop, a failure to wait 20 minutes before administering the breath test, SFST (tasks or exercises), or machine-related issues such as calibration and accuracy. BAC technicians have “a lot of cases” and have to “run around between court rooms.” BAT results may be introduced with an affidavit only, and may lose on a technicality.

Horizontal gaze nystagmus (HGN) is not admissible in this jurisdiction because courts believe it has to be administered under “controlled conditions,” requiring a “true expert.” Only two officers in Palm Beach County qualify as HGN experts. An officer explains they can administer HGN, but officers do not always understand the relationship to impairment. This means they do not know how to testify in court about the use of HGN (and perhaps SFSTs). SFSTs are not convincing to jurors who do not understand the relationship of tests (called “exercises”) to impairment. Most appeals are DUI cases with trial error as the main grounds for appeal (an estimated one appeal for every six trials for all offenses including DUI). Most convictions are upheld.

Probation officers are in every courtroom. Defendants report to the probation officers immediately after sentencing. The probation officers explain conditions to the offenders, have the offenders sign those conditions, dispense basic information and schedule the first appointment. Random breath tests are sometimes required of offenders. Offenders must report monthly to one officer. A hearing is held for probation violations, and police officers have to appear to testify (if needed) on the original violation. Officers are usually not needed. Unnecessary police witnesses are often required to appear, e.g., an “expert” on BAT.

Eighty percent of administrative license revocations are said to result in hearings. The defendant does not have to attend, but the arresting officer does, and the defense attorneys are given “a free shot at the officers.” Hearings are shorter now, because issues are limited. In other counties, defense attorneys are said to sometimes intimidate hearing officers. Overall, officer scheduling is poor - police officers get short notice (five days) and have to prepare a written request for a continuance. Some officers and prosecutors believe that many judges are not sympathetic to the special needs of officers. Defense attorneys play this card routinely.

The judge who was interviewed for this study had never had a DUI case involving drugs other than alcohol. The prosecutor does not file them because neither officers nor prosecutors have received DUI-drug training. In this jurisdiction it must be determined that the suspect is under the influence of a controlled substance interpreted to mean a BAC-type *per se* measurement model for drugs. (Presence is

enough in many states.) Palm Beach County has no trained drug recognition experts that are available for impaired driving cases.

*Sanctioning.* Sanctions are uniform for first offenders but vary for multiple offenders. For a first offense, the offender will typically receive one year of probation, DUI school, and have a driver license suspension for six months with a work permit. The driver license cannot be reinstated until DUI school has been completed. Offenders often do not seek to have their driver licenses reinstated due to barriers (e.g., fines are too expensive), and the system loses contact with them. (Note: This does not mean these individuals do not drive; they are not licensed, but many will still drive.) Ways exist to help offenders get licenses back by arranging for them to complete requirements, e.g., converting fines into community service, granting more time to pay. The defendant has the responsibility of proving that probation conditions were completed.

Repeat offenders receive mandatory jail time if a second offense has occurred within five years, or a third offense within ten years. The judge will grant work release, but time is served with five days per month off for good behavior. House arrest with electronic monitoring is sometimes used as a sanction and is handled by the Palm Beach County Sheriff's Department. One judge did not like the "sheriff's program for house arrest," believing only a judge should impose house arrest. More intensive supervision ("maximum") may be imposed by the court ordering probation officers to visit offenders at their homes. A judge and a prosecutor interviewed for this study believed that one day of jail should equal three days of house arrest.

Collecting fines and supervision costs is sometimes hard. Probationers have to pay \$45 per month. One judge was more concerned with getting money for restitution. A private, for-profit company under contract to the County collects fines and fees and mails out restitution payments. This probation company ("PRIDE") collects monies from offenders and conducts the DUI school but does not monitor the treatment providers. Alcohol evaluation occurs in the DUI school, and clients are referred to separate treatment from that school. The Florida Department of Corrections monitors the treatment providers. PRIDE is monitored by a probation review committee that includes judges and meets once a month; the contract is reviewed annually. At one time three probation organizations were used, one government and two private sector companies. This created many problems and much confusion with probationers reporting to wrong agencies, information from providers being sent to wrong agencies, etc. The only other issue was a conflict of interest because PRIDE initially provided the treatment that they had recommended to offenders; this was rectified by ordering separate treatment providers.

Multiple offenders with high BACs are sometimes sentenced to the "drug farm" as a condition of probation; this is often in addition to jail time that must be served in a regular jail. (The drug farm is technically a jail.) The drug farm combines intensive substance abuse treatment with a boot-camp type physical regimen. Offenders with multiple DUIs within a short period might also be sentenced to the



drug farm. The length of time of treatment depends on the offender's progress and sometimes an offender is given jail credit for inpatient treatment.

The process to revoke probation is started by filing a "violation of probation," scheduling a hearing, and issuing a warrant to the judge to sign. Then, a preliminary hearing (analogous to an arraignment) is conducted with attorneys present. Probation will usually be reinstated if the violation was technical. A probationer may have a second preliminary hearing. If necessary, a final hearing (similar to a trial) is the last step, which could result in termination of probation and imposition of sanctions, usually jail.

#### *Problem Areas and Possible Fixes*

A major problem in this county is the relatively low DWI arrest rate. This is apparently due to a lack of command emphasis of DWI enforcement.

Processing into jail is a problem because of the requirement that the officer be present. BAT vans or substations are needed, but currently no funds are available to pay for them. Most city police officers use the county facility for BAT and jail. There are no municipal jails in the county.

Many problems exist with the current 0.02 law. If a juvenile is stopped for some reason other than DUI-related driving, administered SFSTs and a PBT, and registers above the legal limit, the officer has a problem because probable cause for DUI does not exist. The driver cannot be released because he or she is "under the influence," and juvenile detention centers will not accept individuals not under arrest, nor intoxicated minors. Another problem is transporting minors to a test facility; if the individual is not under arrest, the person cannot technically be taken into custody and transported in a police vehicle. After an arrest occurs, the procedure for disposing of a juvenile and the vehicle is not clear. Currently, the parents are called to come and get a juvenile. If parents or guardians cannot be reached, the vehicle is towed, but the procedure for placing the individual is not clear if he or she is less than 18 years of age. Again, juvenile detention centers usually will not accept DUI offenders because they are intoxicated and jails cannot admit minors. If the person is more than 18 years of age, he or she is processed as an adult.

Another problem is that a driver who has consented to provide a PBT sample can later refuse the second evidentiary test because he or she already consented to the PBT. A judge then will not admit a refusal in court because the legal issues of multiple testing have been deemed too complex to be understood by average drivers. (A PBT reading is not admissible in court.) The state level task force recommends a complete DUI investigation before administering a PBT.

The County does not have enough funds to purchase the PBTs needed to enforce the 0.02 law. It was proposed that \$5-\$10 be added to DUI fines to cover the cost of purchasing additional PBTs.

When a temporary permit is issued pending imposition of an administrative *per se* suspension it is possible that the offender will immediately reoffend. A suggested

solution to driving while impaired shortly afterwards would be to make the permit effective 12-24 hours later.

Interviewing and administration of the breath test is done at the “BAT cave,” a centralized location that is often a long distance from the scene of arrest (1.0-1.5 hours).

As indicated above, a judge complained that police officers too frequently ask questions by rote during the taping session. This matter should be clarified in training.

Finally, the county has a problem in scheduling officers for administrative hearings. This is due primarily to the short notice of the hearing (five days) given to police officers. Then, if they will be unable to appear, the officers have to file a written request for a continuance. The obvious immediate fixes for this problem are to extend the notice and to eliminate the need for filing a written request for a continuance. It is also clear that there is a need for a deeper examination of scheduling officer appearances at judicial proceedings of all types. This would help eliminate or reduce many conflicts that lead to the problem in scheduling officers for administrative hearings.